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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051659
Party	Defendant The Dille Family Trust
Correspondence Address	Lawrence E. Apolzon Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES ddonahue@fzlj.com
Submission	Request to Withdraw as Attorney
Filer's Name	David Donahue
Filer's e-mail	ddonahue@fzlj.com, lapolzon@fzlj.com
Signature	/ddonahue/
Date	06/02/2010
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**IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NOWLAN FAMILY TRUST,

Petitioner,

v.

THE DILLE FAMILY TRUST,

Registrant.

**Cancellation No. 92051659**

**MOTION FOR WITHDRAWAL FROM EMPLOYMENT  
AS COUNSEL FOR REGISTRANT**

Pursuant to Trademark Rule of Practice 10.40 and Trademark Trial and Appeal Board Manual of Procedure § 513, Fross Zelnick Lehrman & Zissu, P.C. (“Fross Zelnick”), counsel for Registrant The Dille Family Trust (“Registrant”) in the above proceeding, hereby moves to withdraw as counsel for Registrant.

Fross Zelnick requests permission to withdraw on the following grounds: (1) Registrant has failed to provide instructions to Fross Zelnick, and thereby has rendered it “unreasonably difficult” for Fross Zelnick to carry out employment effectively, *see* Trademark Rule of Practice 10.40(c)(1)(iv); and (2) Registrant has failed to pay several bills rendered by Fross Zelnick “for an unreasonable period of time,” *see* Trademark Rule of Practice 10.40(c)(1)(vi).

Fross Zelnick has notified Registrant of its desire to withdraw from employment, and has allowed time for employment of another practitioner. Specifically, on April 9, 2010, after providing several reminders concerning unpaid bills, Fross Zelnick advised Registrant that payment issues needed to be resolved if it was to continue representing

Registrant in this proceeding and other matters. In response, Registrant instructed Fross Zelnick to stop work until payment issues were resolved. After two weeks passed with no resolution on payment, Fross Zelnick advised Registrant on April 22, 2010, that it would seek to withdraw from representation if no suitable payment arrangements were made by May 7, 2010. Fross Zelnick refrained from seeking such withdrawal and provided further services to Registrant in connection with this proceeding upon Registrant's agreement to a payment plan on May 5, 2010. On May 20, 2010, however, Registrant advised Fross Zelnick that it no longer wished to go forward with such payment arrangement. Accordingly, on May 27, 2010, Fross Zelnick provided Registrant with a schedule of outstanding deadlines in this proceeding and various other matters and advised Registrant that it would seek permission from the Board to withdraw from representation as of June 1, 2010.

All papers and property that relate to the proceeding and to which the client is entitled are in Registrant's possession,<sup>1</sup> and there is no unearned advance or fee paid by Registrant that need be returned to Registrant. *See* Trademark Rule of Practice 10.40(a).

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<sup>1</sup> Pursuant to its rights under New York law, which governs the attorney-client relationship between Fross Zelnick and Registrant, Fross Zelnick has applied a lien on its files relating to its representation of Registrant in this proceeding and other matters pending Registrant's payment of outstanding bills. *See, e.g., First Nat'l Bank of Cincinnati v. Pepper*, 454 F.2d 626, 633 (2d Cir. 1972). Nevertheless, Fross Zelnick is informed and believes that Registrant possesses duplicate copies of all key papers and property that relate to the proceeding.

## **CONCLUSION**


Based on the foregoing, Fross Zelnick requests that its Motion for Withdrawal from Employment as Counsel for Registrant be granted. Until Registrant appoints new counsel, Fross Zelnick suggests that the Board mail all correspondence relating to this matter to Registrant at the following address:

The Trustees of the Dille Family Trust  
P.O. Box 533  
Lake Forest, IL 60045

Respectfully,

Dated: New York, New York  
June 2, 2010

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: \_\_\_\_\_  
David Donahue

866 United Nations Plaza  
New York, New York 10017  
(212) 813-5900  
[ddonahue@fzlj.com](mailto:ddonahue@fzlj.com)

*Attorneys for Registrant The Dille Family Trust*

**CERTIFICATE OF SERVICE**

The undersigned counsel for Registrant The Dille Family Trust hereby certifies that a true and correct copy of the attached Motion for Withdrawal from Employment as Counsel for Registrant was served by First Class Mail, postage prepaid, on June 2, 2010, on the following:

The Trustees of the Dille Family Trust  
P.O. Box 533  
Lake Forest, IL 60045

John J. O'Malley  
Volpe and Koeing, P.C.  
30 S. 17th Street - United Plaza  
Philadelphia, PA 19103  
(Counsel for Petitioner)



David Donahue